

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
APPLICATION FOR UNITED STATES PATENT

|                             |   |                           |
|-----------------------------|---|---------------------------|
| In re Patent Application of | ) | Group Art Unit:           |
|                             | ) |                           |
| JAMES SAY et al.            | ) | <b>POWER OF ATTORNEY</b>  |
|                             | ) |                           |
| Appln. No. Filed Herewith   | ) |                           |
|                             | ) | Jackson & Co., LLP        |
| Filed: November 24, 2003    | ) | 6114 La Salle Ave., #507  |
|                             | ) | Oakland, CA 94611-2802    |
| For: ANALYTE MONITORING     | ) | Telephone: (510) 652-6481 |
| DEVICE AND METHODS OF       | ) | Facsimile: (510) 652-5691 |
| USE                         | ) |                           |
| <hr/>                       |   | <b>Customer No. 30349</b> |

Mail Stop Patent Application  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicants herein revoke all previous Power of Attorneys and hereby appoints

Seong-Kun Oh, Reg. No. 48,210  
Kyla Harriel, Reg. No. 41,819  
J. William Wigert, Jr., Reg. No. 24,582, and  
Kyong Oh, Reg. No. 54,346,

and the law firm of JACKSON & CO., L.L.P., all having an address at 6114 La Salle Ave., #507, Oakland, CA 94611-2802 as its attorneys with full power of substitution to prosecute this application and to transact all business in the Patent and Trademark Office in connection therewith.

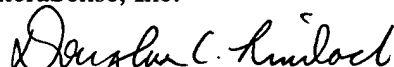
Please direct all correspondence regarding this application to the following:

JACKSON & CO., L.L.P.  
Attn: Kuni Oh, Esq.  
6114 La Salle Ave., # 507  
Oakland, CA 94611-2802

**Customer No. 30349**

TheraSense, Inc.

Dated: 11-21-03

By:   
Name: Douglas C. Limbach

Title: Director of Intellectual Property

MERCHANT, GOULD, SMITH, EDELL, WELTER &amp; SCHMIDT

## United States Patent Application

## COMBINED DECLARATION AND POWER OF ATTORNEY

As a below named inventor I hereby declare that: my residence, post office address and citizenship are as stated below next to my name; that

I verily believe I am the original, first and sole inventor (if only one name is listed below) or a joint inventor (if plural inventors are named below) of the subject matter which is claimed and for which a patent is sought on the invention entitled: ANALYTE MONITORING DEVICE AND METHODS OF USE

The specification of which

- a. ☐ is attached hereto  
 b. ☒ is entitled ANALYTE MONITORING DEVICE AND METHODS OF USE, having an attorney docket number 12008.15US01  
 c. ☒ was filed on April 30, 1998 as application serial no. 09/070,677 and was amended on (if applicable) (in the case of a PCT-filed application) described and claimed in international no. filed and as amended on (if any), which I have reviewed and for which I solicit a United States patent.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the patentability of this application in accordance with Title 37, Code of Federal Regulations, § 1.56 (attached hereto).

I hereby claim foreign priority benefits under Title 35, United States Code, § 119/365 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on the basis of which priority is claimed:

- a. ☒ no such applications have been filed.  
 b. ☐ such applications have been filed as follows:

| FOREIGN APPLICATION(S), IF ANY, CLAIMING PRIORITY UNDER 35 USC § 119         |                    |                                      |                                     |
|--|--------------------|--------------------------------------|-------------------------------------|
| COUNTRY  | APPLICATION NUMBER | DATE OF FILING<br>(day, month, year) | DATE OF ISSUE<br>(day, month, year) |
|  |                    |                                      |                                     |
| ALL FOREIGN APPLICATION(S), IF ANY, FILED BEFORE THE PRIORITY APPLICATION(S) |                    |                                      |                                     |
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|  |                    |                                      |                                     |

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|-------------------------|-----------------------------------|---------------------------------------|
|                         |                                   |                                       |

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|                                     |                                   |

I hereby appoint the following attorney(s) and patent agent(s) to prosecute this application to transact all business in the Patent and Trademark Office connected herewith:

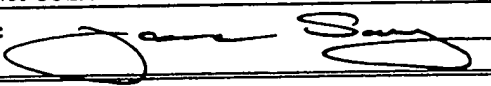

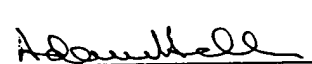
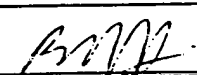
|                         |                   |                        |                    |
|-------------------------|-------------------|------------------------|--------------------|
| Albrecht, John W.       | Reg. No. 40,481   | Lacy, Paul E.          | Reg. No. 38,946    |
| Ansems, Gregory M.      | Reg. No. P-42,264 | Larson, James A.       | Reg. No. 40,443    |
| Batzli, Brian H.        | Reg. No. 32,960   | Lasky, Michael B.      | Reg. No. 29,555    |
| Beard, John L.          | Reg. No. 27,612   | Lindquist, Timothy A.  | Reg. No. 40,701    |
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| Black, Bruce E.         | Reg. No. P-41,622 | McDaniel, Karen D.     | Reg. No. 37,674    |
| Blasdell, Thomas L.     | Reg. No. 31,329   | McDonald, Daniel W.    | Reg. No. 32,044    |
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| Bruess, Steven C.       | Reg. No. 34,130   | Mueller, Douglas P.    | Reg. No. 30,300    |
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| Chiapetta, James R.     | Reg. No. 39,634   | Reich, John C.         | Reg. No. 37,703    |
| Clifford, John A.       | Reg. No. 30,247   | Reiland, Earl D.       | Reg. No. 25,767    |
| Daignault, Ronald A.    | Reg. No. 25,968   | Rittmaster, Ted R.     | Reg. No. 32,933    |
| Daley, Dennis R.        | Reg. No. 34,994   | Schmaltz, David G.     | Reg. No. 39,828    |
| Dalglish, Leslie E.     | Reg. No. 40,579   | Schuman, Mark D.       | Reg. No. 31,197    |
| Daulton, Julie R.       | Reg. No. 36,414   | Schumann, Michael D.   | Reg. No. 30,422    |
| DeVries Smith, Kate     | Reg. No. P-42,157 | Sebald, Gregory A.     | Reg. No. 33,280    |
| DiPietro, Mark J.       | Reg. No. 28,707   | Sharp, Janice A.       | Reg. No. 34,051    |
| Edell, Robert T.        | Reg. No. 20,187   | Skoog, Mark T.         | Reg. No. 40,178    |
| Epp Ryan, Sandra        | Reg. No. 39,667   | Smith, Jerome R.       | Reg. No. 35,684    |
| Farber, Michael B.      | Reg. No. 32,612   | Soderberg, Richard     | Reg. No. -P-43,352 |
| Funk, Steven R.         | Reg. No. 37,830   | Sumner, John P.        | Reg. No. 29,114    |
| Glance, Robert J.       | Reg. No. 40,620   | Sumners, John S.       | Reg. No. 24,216    |
| Golla, Charles E.       | Reg. No. 26,896   | Tellekson, David K.    | Reg. No. 32,314    |
| Gorman, Alan G.         | Reg. No. 38,472   | Trembath, Jon R.       | Reg. No. 38,344    |
| Gould, John D.          | Reg. No. 18,223   | Underhill, Albert L.   | Reg. No. 27,403    |
| Gregson, Richard        | Reg. No. P-41,804 | Vandenburgh, J. Derek  | Reg. No. 32,179    |
| Gresens, John J.        | Reg. No. 33,112   | Victor, David W.       | Reg. No. 39,867    |
| Hamre, Curtis B.        | Reg. No. 29,165   | Welter, Paul A.        | Reg. No. 20,890    |
| Hillson, Randall A.     | Reg. No. 31,838   | Whipps, Brian          | Reg. No. P-43,261  |
| Johnston, Scott W.      | Reg. No. 39,721   | Williams, Douglas J.   | Reg. No. 27,054    |
| Kastelic, Joseph M.     | Reg. No. 37,160   | Witt McDonald, Jonelle | Reg. No. P-41,980  |
| Kettelberger, Denise    | Reg. No. 33,924   | Wood, Gregory B.       | Reg. No. 28,133    |
| Komanduri, Janaki       | Reg. No. 40,684   | Wood, William J.       | Reg. No. P-42,236  |
| Kowalchyk, Alan W.      | Reg. No. 31,535   | Xu, Min S.             | Reg. No. 39,536    |
| Kowalchyk, Katherine M. | Reg. No. 36,848   |                        |                    |

I hereby authorize them to act and rely on instructions from and communicate directly with the person/assignee/attorney/firm/ organization who/which first sends/sent this case to them and by whom/which I hereby declare that I have consented after full disclosure to be represented unless/until I instruct Merchant, Gould, Smith, Edell, Welter & Schmidt to the contrary.

Please direct all correspondence in this case to Merchant, Gould, Smith, Edell, Welter & Schmidt at the address indicated below:

Merchant, Gould, Smith, Edell,  
Welter & Schmidt  
3100 Norwest Center  
90 South Seventh Street  
Minneapolis, MN 55402-4131

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

|  |                         |  |                                     |   |
|--|-------------------------|--|-------------------------------------|---|
| 2  | Full Name Of Inventor   | Family Name SAY                            | First Given Name JAMES              | Second Given Name                             |
| 0  | Residence & Citizenship | City ALAMEDA                               | State or Foreign Country CALIFORNIA | Country of Citizenship USA                    |
| 1  | Post Office Address     | Post Office Address 460 COLA BALLENA #A    | City ALAMEDA                        | State & Zip Code/Country CALIFORNIA 94501/USA |
| Signature of Inventor 201:    |                         |  | Date: 6/25/98                       |   |
| 2  | Full Name Of Inventor   | Family Name TOMASCO                        | First Given Name MICHAEL            | Second Given Name F.                          |
| 0  | Residence & Citizenship | City CUPERTINO                             | State or Foreign Country CALIFORNIA | Country of Citizenship USA                    |
| 2  | Post Office Address     | Post Office Address 22528 POPPY DRIVE      | City CUPERTINO                      | State & Zip Code/Country CALIFORNIA 95015/USA |
| Signature of Inventor 202:    |                         |  | Date: 6/26/98                       |   |
| 2  | Full Name Of Inventor   | Family Name HELLER                         | First Given Name ADAM               | Second Given Name                             |
| 0  | Residence & Citizenship | City AUSTIN                                | State or Foreign Country TEXAS      | Country of Citizenship USA                    |
| 3  | Post Office Address     | Post Office Address 5317 VALBURN CIRCLE    | City AUSTIN                         | State & Zip Code/Country TEXAS 78731/USA      |
| Signature of Inventor 203:  |                         |  | Date: June 25, 1998                 |   |
| 2  | Full Name Of Inventor   | Family Name GAL                            | First Given Name YORAM              | Second Given Name                             |
| 0  | Residence & Citizenship | City KIBBUTZ YAGUR                         | State or Foreign Country ISRAEL     | Country of Citizenship ISRAEL                 |
| 4  | Post Office Address     | Post Office Address P.O. BOX 126           | City KIBBUTZ YAGUR, 30065           | State & Zip Code/Country ISRAEL               |
| Signature of Inventor 204:   |                         |  | Date:                               |   |
| 2  | Full Name Of Inventor   | Family Name ARIA                           | First Given Name BEHRAD             | Second Given Name                             |
| 0  | Residence & Citizenship | City ALAMEDA                               | State or Foreign Country CALIFORNIA | Country of Citizenship USA                    |
| 5  | Post Office Address     | Post Office Address 817 SANTA CLARA AVENUE | City ALAMEDA                        | State & Zip Code/Country CALIFORNIA 94502/USA |
| Signature of Inventor 205:  |                         |  | Date: 6/26/98                       |   |

|  |                            |  |  |  |
|--|----------------------------|--|--|--|
| 2  | Full Name<br>Of Inventor   | Family Name<br>HELLER                                    | First Given Name<br>EPHRAIM            | Second Given Name                                |
| 0  | Residence<br>& Citizenship | City<br>OAKLAND  | State or Foreign Country<br>CALIFORNIA | Country of Citizenship<br>USA                    |
| 6  | Post Office<br>Address     | Post Office Address<br>8101 SKYLINE BOULEVARD            | City<br>OAKLAND                        | State & Zip Code/Country<br>CALIFORNIA 94611/USA |
| Signature of Inventor 206: <i>Eph Heller</i>       |                            |  | Date: <i>6/22/98</i>                   |  |
| 2  | Full Name<br>Of Inventor   | Family Name<br>PLANTE                                    | First Given Name<br>PHILLIP            | Second Given Name<br>JOHN                        |
| 0  | Residence<br>& Citizenship | City<br>SUNNYVALE  | State or Foreign Country<br>CALIFORNIA | Country of Citizenship<br>USA                    |
| 7  | Post Office<br>Address     | Post Office Address<br>M-116, 655 SOUTH FAIR OAKS AVENUE | City<br>SUNNYVALE                      | State & Zip Code/Country<br>CALIFORNIA 94086/USA |
| Signature of Inventor 207: <i>Phillip J Plante</i> |                            |  | Date: <i>6/25/98</i>                   |  |
| 2  | Full Name<br>Of Inventor   | Family Name<br>VREEKE                                    | First Given Name<br>MARK               | Second Given Name<br>S.                          |
| 0  | Residence<br>& Citizenship | City<br>ALAMEDA  | State or Foreign Country<br>CALIFORNIA | Country of Citizenship<br>USA                    |
| 8  | Post Office<br>Address     | Post Office Address<br>2826 CALHOUN STREET               | City<br>ALAMEDA                        | State & Zip Code/Country<br>CALIFORNIA 94501/USA |
| Signature of Inventor 208: <i>Mark Vreeke</i>      |                            |  | Date: <i>6/25/98</i>                   |  |
| 2  | Full Name<br>Of Inventor   | Family Name<br>FRIEDMAN                                  | First Given Name<br>KEITH              | Second Given Name<br>A.                          |
| 0  | Residence<br>& Citizenship | City<br>AUSTIN   | State or Foreign Country<br>TEXAS      | Country of Citizenship<br>USA                    |
| 9  | Post Office<br>Address     | Post Office Address<br>500 E. RIVERSIDE DRIVE, APT. 230  | City<br>AUSTIN                         | State & Zip Code/Country<br>TEXAS 78704/USA      |
| Signature of Inventor 209: <i>Keith A Friedman</i> |                            |  | Date: <i>6/30/98</i>                   |  |
| 2  | Full Name<br>Of Inventor   | Family Name<br>COLMAN                                    | First Given Name<br>FREDRIC            | Second Given Name<br>C.                          |
| 1  | Residence<br>& Citizenship | City<br>BERKELEY   | State or Foreign Country<br>CALIFORNIA | Country of Citizenship<br>USA                    |
| 0  | Post Office<br>Address     | Post Office Address<br>6879 BRISTOL DRIVE                | City<br>BERKELEY                       | State & Zip Code/Country<br>CALIFORNIA 94705/USA |
| Signature of Inventor 210: <i>Fredric Colman</i>   |                            |  | Date: <i>6-25-98</i>                   |  |

**§ 1.56 Duty to disclose information material to patentability.**

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is canceled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is canceled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
  - (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.
- (b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and
- (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim;
- or
- (2) It refutes, or is inconsistent with, a position the applicant takes in:
    - (i) Opposing an argument of unpatentability relied on by the Office, or
    - (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

- (c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:
- (1) Each inventor named in the application;
  - (2) Each attorney or agent who prepares or prosecutes the application; and
  - (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.
- (d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.

## United States Patent Application

## COMBINED DECLARATION AND POWER OF ATTORNEY

As a below named inventor I hereby declare that: my residence, post office address and citizenship are as stated below next to my name; that

I verily believe I am the original, first and sole inventor (if only one name is listed below) or a joint inventor (if plural inventors are named below) of the subject matter which is claimed and for which a patent is sought on the invention entitled: ANALYTE MONITORING DEVICE AND METHODS OF USE

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| Golla, Charles E.       | Reg. No. 26,896   | Tellekson, David K.    | Reg. No. 32,314   |
| Gorman, Alan G.         | Reg. No. 38,472   | Trembath, Jon R.       | Reg. No. 38,344   |
| Gould, John D.          | Reg. No. 18,223   | Underhill, Albert L.   | Reg. No. 27,403   |
| Gregson, Richard        | Reg. No. P-41,804 | Vandenburgh, J. Derek  | Reg. No. 32,179   |
| Gresens, John J.        | Reg. No. 33,112   | Victor, David W.       | Reg. No. 39,867   |
| Hamre, Curtis B.        | Reg. No. 29,165   | Welter, Paul A.        | Reg. No. 20,890   |
| Hillson, Randall A.     | Reg. No. 31,838   | Whipps, Brian          | Reg. No. P-43,261 |
| Johnston, Scott W.      | Reg. No. 39,721   | Williams, Douglas J.   | Reg. No. 27,054   |
| Kastelic, Joseph M.     | Reg. No. 37,160   | Witt McDonald, Jonelle | Reg. No. P-41,980 |
| Kettelberger, Denise    | Reg. No. 33,924   | Wood, Gregory B.       | Reg. No. 28,133   |
| Komanduri, Janaki       | Reg. No. 40,684   | Wood, William J.       | Reg. No. P-42,236 |
| Kowalchyk, Alan W.      | Reg. No. 31,535   | Xu, Min S.             | Reg. No. 39,536   |
| Kowalchyk, Katherine M. | Reg. No. 36,848   |                        |                   |

I hereby authorize them to act and rely on instructions from and communicate directly with the person/assignee/attorney/firm/ organization who/which first sends/sent this case to them and by whom/which I hereby declare that I have consented after full disclosure to be represented unless/until I instruct Merchant, Gould, Smith, Edell, Welter & Schmidt to the contrary.

Please direct all correspondence in this case to Merchant, Gould, Smith, Edell, Welter & Schmidt at the address indicated below:

Merchant, Gould, Smith, Edell,  
Welter & Schmidt  
3100 Norwest Center  
90 South Seventh Street  
Minneapolis, MN 55402-4131



I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

|                            |                         |  |                                     |   |
|----------------------------|-------------------------|--|-------------------------------------|---|
| 2                          | Full Name Of Inventor   | Family Name SAY                            | First Given Name JAMES              | Second Given Name                             |
| 0                          | Residence & Citizenship | City ALAMEDA                               | State or Foreign Country CALIFORNIA | Country of Citizenship USA                    |
| 1                          | Post Office Address     | Post Office Address 460 COLA BALLENA #A    | City ALAMEDA                        | State & Zip Code/Country CALIFORNIA 94501/USA |
| Signature of Inventor 201: |                         |  | Date:                               |   |
| 2                          | Full Name Of Inventor   | Family Name TOMASCO                        | First Given Name MICHAEL            | Second Given Name F.                          |
| 0                          | Residence & Citizenship | City CUPERTINO                             | State or Foreign Country CALIFORNIA | Country of Citizenship USA                    |
| 2                          | Post Office Address     | Post Office Address 22528 POPPY DRIVE      | City CUPERTINO                      | State & Zip Code/Country CALIFORNIA 95015/USA |
| Signature of Inventor 202: |                         |  | Date:                               |   |
| 2                          | Full Name Of Inventor   | Family Name HELLER                         | First Given Name ADAM               | Second Given Name                             |
| 0                          | Residence & Citizenship | City AUSTIN                                | State or Foreign Country TEXAS      | Country of Citizenship USA                    |
| 3                          | Post Office Address     | Post Office Address 5317 VALBURN CIRCLE    | City AUSTIN                         | State & Zip Code/Country TEXAS 78731/USA      |
| Signature of Inventor 203: |                         |  | Date:                               |   |
| 2                          | Full Name Of Inventor   | Family Name GAL                            | First Given Name YORAM              | Second Given Name                             |
| 0                          | Residence & Citizenship | City KIBBUTZ YAGUR                         | State or Foreign Country ISRAEL     | Country of Citizenship ISRAEL                 |
| 4                          | Post Office Address     | Post Office Address P.O. BOX 126           | City KIBBUTZ YAGUR, 30065           | State & Zip Code/Country ISRAEL               |
| Signature of Inventor 204: |                         |  | Date: 2 July 98                     |   |
| 2                          | Full Name Of Inventor   | Family Name ARIA                           | First Given Name BEHRAD             | Second Given Name                             |
| 0                          | Residence & Citizenship | City ALAMEDA                               | State or Foreign Country CALIFORNIA | Country of Citizenship USA                    |
| 5                          | Post Office Address     | Post Office Address 817 SANTA CLARA AVENUE | City ALAMEDA                        | State & Zip Code/Country CALIFORNIA 94502/USA |
| Signature of Inventor 205: |                         |  | Date:                               |   |

|                            |                            |  |  |  |
|----------------------------|----------------------------|--|--|--|
| 2                          | Full Name<br>Of Inventor   | Family Name<br>HELLER                                    | First Given Name<br>EPHRAIM            | Second Given Name                                |
| 0                          | Residence<br>& Citizenship | City<br>OAKLAND  | State or Foreign Country<br>CALIFORNIA | Country of Citizenship<br>USA                    |
| 6                          | Post Office<br>Address     | Post Office Address<br>8101 SKYLINE BOULEVARD            | City<br>OAKLAND                        | State & Zip Code/Country<br>CALIFORNIA 94611/USA |
| Signature of Inventor 206: |                            |  | Date:                                  |  |
| 2                          | Full Name<br>Of Inventor   | Family Name<br>PLANTE                                    | First Given Name<br>PHILLIP            | Second Given Name<br>JOHN                        |
| 0                          | Residence<br>& Citizenship | City<br>SUNNYVALE  | State or Foreign Country<br>CALIFORNIA | Country of Citizenship<br>USA                    |
| 7                          | Post Office<br>Address     | Post Office Address<br>M-116, 655 SOUTH FAIR OAKS AVENUE | City<br>SUNNYVALE                      | State & Zip Code/Country<br>CALIFORNIA 94086/USA |
| Signature of Inventor 207: |                            |  | Date:                                  |  |
| 2                          | Full Name<br>Of Inventor   | Family Name<br>VREEKE                                    | First Given Name<br>MARK               | Second Given Name<br>S.                          |
| 0                          | Residence<br>& Citizenship | City<br>ALAMEDA  | State or Foreign Country<br>CALIFORNIA | Country of Citizenship<br>USA                    |
| 8                          | Post Office<br>Address     | Post Office Address<br>2826 CALHOUN STREET               | City<br>ALAMEDA                        | State & Zip Code/Country<br>CALIFORNIA 94501/USA |
| Signature of Inventor 208: |                            |  | Date:                                  |  |
| 2                          | Full Name<br>Of Inventor   | Family Name<br>FRIEDMAN                                  | First Given Name<br>KEITH              | Second Given Name<br>A.                          |
| 0                          | Residence<br>& Citizenship | City<br>AUSTIN   | State or Foreign Country<br>TEXAS      | Country of Citizenship<br>USA                    |
| 9                          | Post Office<br>Address     | Post Office Address<br>500 E. RIVERSIDE DRIVE, APT. 230  | City<br>AUSTIN                         | State & Zip Code/Country<br>TEXAS 78704/USA      |
| Signature of Inventor 209: |                            |  | Date:                                  |  |
| 2                          | Full Name<br>Of Inventor   | Family Name<br>COLMAN                                    | First Given Name<br>FREDRIC            | Second Given Name<br>C.                          |
| 1                          | Residence<br>& Citizenship | City<br>BERKELEY   | State or Foreign Country<br>CALIFORNIA | Country of Citizenship<br>USA                    |
| 0                          | Post Office<br>Address     | Post Office Address<br>6879 BRISTOL DRIVE                | City<br>BERKELEY                       | State & Zip Code/Country<br>CALIFORNIA 94705/USA |
| Signature of Inventor 210: |                            |  | Date:                                  |  |

**§ 1.56 Duty to disclose information material to patentability.**

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is canceled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is canceled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

(1) prior art cited in search reports of a foreign patent office in a counterpart application, and

(2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

(1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim;

or

(2) It refutes, or is inconsistent with, a position the applicant takes in:

(i) Opposing an argument of unpatentability relied on by the Office, or

(ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

(1) Each inventor named in the application;

(2) Each attorney or agent who prepares or prosecutes the application; and

(3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.